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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,697	06/20/2001	Kenneth Nathan Price	8188M	4264

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EXAMINER
DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 09/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/885,697	Applicant(s) PRICE ET AL.
	Examiner Gregory R. Del Cotto	Art Unit 1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-31* is/are pending in the application.

4a) Of the above claim(s) *16-20 and 23-29* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,13-15,21,22,30 and 31* is/are rejected.

7)☒ Claim(s) *12* is/are objected to.

8)☒ Claim(s) *1-31* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

1. Claims 1-31 are pending.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-15, 21, 22, and 30, drawn to a rinse-added fabric treatment composition, classified in class 510, subclass 521.

II. Claims 16-20, 23-29, and 31, drawn to a method for reducing surfactant residue on a fabric, classified in class 8, subclass 137.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the composition of Group I can be used in a materially different process such as a rinse aid in a machine dishwasher.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mark Charles on September 2, 2003, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-15, 21, 22, 30, and 31. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-20 and 23-29 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical

Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 98/13456.

'456 teaches powder, paste, or liquid washing or laundering post-treatment which contains cyclodextrin and a method for treatment textiles. See Abstract. The cyclodextrins can be contained in the agents in an amount of 0.5 wt% to 10 wt%. The agents are dispensed into the wash or rinse liquid so that the cyclodextrins are added in an amount of 0.1 to 5% by weight with respect to the amount of textiles to be rinsed. As a rule the pH of a liquid agent lies between 1 and 13, in particular between 1 and 7.5. See page 6, lines 15-40. To establish a low pH, acids such as phosphoric acid, hydrochloric acid, citric acid, lactic acid, etc. are added to the composition. Additionally, cationic softening agents may also be added to the compositions. See page 7, lines 1-20. The agents can be added directly to the rinse liquid during wash cycle or in a rinse operation after washing. See page 8, lines 1-8.

Note that with respect to the rinsing capacity of the composition as recited by the instant claims, the Examiner asserts that the compositions taught by '456 would inherently have the same rinsing capacity because '456 teaches compositions containing the same components in the same proportions as recited by the instant claims. Accordingly, the broad teachings of '456 anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '456 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the same rinsing capacity value of the composition in order to provide the optimum cleaning properties to the composition since '456 teaches that the amount of required components added to the composition may be varied.

Claims 4-6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/13456.

'456 is relied upon as set forth above. However, '456 does not specifically teach a fabric treatment composition having the specific pH containing a pH control agent and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a fabric treatment composition having the specific pH containing a pH control agent and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '456 suggest a fabric treatment composition having the specific pH containing a pH control agent and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1-6 and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ramachandran (US 3,904,359).

Ramachandran teaches a fabric treating composition for use in preventing the staining of fabrics consisting essentially of an aqueous solution of a complexing acid and a cationic fabric softening agent, the complexing acid and the softening agent being present in amounts so that on dilution with water, the complexing acid comprises from 0.01 to 0.1% by weight of the dilution and the softening agent comprises from 0 to 0.1% of the dilution. See Abstract. Suitable complexing acids include citric acid, maleic acid, tartaric acid, etc. See column 2, lines 35-50.

Specifically, Ramachandran teaches rinsing clean laundry with a composition containing 0.02% citric acid in water and having a ph of 4. Additionally, laundry is rinsed with a composition containing 0.01% N-tallow propylene diamine and 0.02% citric acid. See column 5, line 15 to column 6, line 20. Note that with respect to the rinsing capacity of the composition as recited by the instant claims, the Examiner asserts that the compositions taught by Ramachandran would inherently have the same rinsing capacity because Ramachandran teaches compositions containing the same components in the same proportions as recited by the instant claims. Accordingly, the broad teachings of Ramachandran anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of Ramachandran are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the same rinsing capacity value of the composition in order to provide the optimum cleaning properties to the composition

since Ramachandran teaches that the amount of required components added to the composition may be varied.

Claims 1-4, 7-11, 13-15, 21, 22, 30, and 31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over WO 97/42292.

'292 teaches laundry detergent compositions comprising C12-C14 dimethyl hydroxyethyl quaternary ammonium cationic surfactants in combination with certain modified polyamines which provide increased fabric cleaning benefits. See Abstract. Additionally, other ingredients may be used such as suds suppressors including silicone suds suppressors, polyethylene glycol/polypropylene glycol. See page 45, lines 10-50. The detergent compositions will also have a pH of from about 6.5 to about 11. See page 24, lines 1-6. Also, the compositions may contain detergent builders such as citric acid, succinic acid, etc. See page 35, lines 10-30.

Specifically, '292 teaches granular detergent compositions containing 12.25% linear alkyl benzene sulfonate, 0.91% Neodol 45-7, 0.65% dimethyl hydroxyethyl ammonium chloride, 3.45% coco fatty acid, 2.4% tallow fatty acid, 0.5% diethylenetriamine pentamethyl phosphonic acid, 0.17% optical brightener, water, etc.

Note that with respect to the rinsing capacity and pH of the composition as recited by the instant claims, the Examiner asserts that the compositions taught by '292 would inherently have the same rinsing capacity and pH because '292 teaches compositions containing the same components in the same proportions as recited by

the instant claims. Accordingly, the broad teachings of '292 anticipate the material limitations of the instant claims.

Alternatively, even if the broad teachings of '292 are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the same rinsing capacity value of the composition in order to provide the optimum cleaning properties to the composition since '292 teaches that the amount of required components added to the composition may be varied.

Note that, regarding applicant's recitation of what is disclosed by the instructions, "where sole distinction set out in claims over prior art is in printed matter, there being no new feature of physical structure and no new relation of printed matter to physical structure, such claims may not be allowed; it is only where claims define either new features of structure of new relations of printed matter to structure, or both, which new features or new relations give rise to some new and useful function, effect, or result, that claims may be allowed; particular branch of art considered does not change these principles." Ex parte Gwinn, 112 USPQ 439. As the compositions are obvious, and the instructions do not give rise to a new and useful function, effect, or result, they do not contribute a patentable difference to applicant's invention.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
September 6, 2003